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In re Application of : DECISION ON
Barrett et al. :
Application No.: 10/522,041 :
PCT No.: PCT/US2003/22001 :
Filing Date: 11 July 2003 : PETITION UNDER
Priority Date: 19 July 2002 :
Attorney's Docket No.: CSP-105-A :
For: MOTORCYCLE ELECTRONIC KEY SYSTEMEN : 37 CFR 1.78(a)(3)

This is in response to applicant's communication "PETITION UNDER 37 CFR 1.78(a)(3)" filed 20 March 2006 to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of a prior-filed international application designating the United States of America (Application No. PCT/US2003/22001, filed 11 July 2003).

The petition under 37 CFR 1.78(a)(3) is **dismissed** as moot.

The instant petition seeks acceptance of a late claim for priority to international application PCT/US2003/22001 by way of an amendment to the specification, which reads: "This application is a national phase application under 35 U.S.C. § 371 of International Application No. PCT/US2003/22001 filed 11 July 2003, which..."

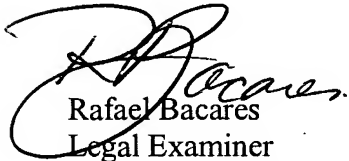
As set forth in MPEP 1893.03(c), page 1800-199, a national stage application filed under 35 U.S.C. § 371 may not claim benefit of the filing date of the international application of which it is the national stage since its filing date is the date of filing of that international application. *See also* MPEP 1893.03(b). In this regard, since the international application is not an earlier application (it has the same filing date as the national stage), a priority claim in the national stage of the international application is inappropriate. Accordingly, it is not necessary for the applicant to amend the first sentence of the specification to reference the international application number that was used to identify the application during international processing of the application by the international authorities prior to commencement of the national stage under 35 U.S.C. § 371. It is further noted that a timely benefit claim to provisional application 60/397,440 in compliance with 37 CFR 1.178(a)(4)-(5) is present in the first sentence of the specification.

In view of the dismissal of the instant petition as moot, the \$1,370 fee submitted are unnecessary and will be credited to petitioner's deposit account 50-1212/UTSG:255US in due course.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.78(a)(3) is **DISMISSED** as moot.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision.



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